U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

C-1

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 01 151 52511 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The immigrant visa petition was denied by the Director of the California Service Center. An appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion to reopen. The motion to reopen will be granted; the denial of the visa petition will be affirmed.

The petitioner states that it is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), in order to employ him as an associate pastor. The center director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing date of the petition.

On appeal, counsel asserted that the beneficiary was "actively and continuously engaged in pastoral duties" on a voluntary basis during the two-year qualifying period. Counsel stated that the beneficiary's sister provided him with financial support during the two-year qualifying period.

The director of the AAO dismissed the appeal based on a finding that the petitioner had not overcome the ground for denial of the petition. It was noted that the petitioner also had failed to establish that it had the ability to pay the beneficiary the proffered wage. The director of the AAO also determined that the petitioner had not established that the beneficiary qualified as a minister.

On motion, counsel submits a statement and additional evidence.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide non-profit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
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> (II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
>
> (III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

Pursuant to 8 C.F.R. § 204.5(m)(1):

> Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide non-profit religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 at the request of the organization. All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

The issue raised by the director is whether the petitioner has established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing date of the petition.

Pursuant to 8 C.F.R. § 204.5(m)(1):

> All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

The petition was filed on March 22, 2001. Therefore, the petitioner must establish that the beneficiary had been continuously performing the duties of a religious vocation or occupation during the period from March 22, 1999 to March 22, 2001.

The record shows that the beneficiary was admitted to the United States on September 2, 2000 as a nonimmigrant B-2 visitor with stay authorized to September 1, 2001. The petitioner indicated on the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, that the beneficiary had not engaged in unlawful employment in the United States.

The record shows that the beneficiary was awarded a diploma in Theology by [redacted] in [redacted] on February 17, 1994, and was ordained as an "elder" by the [redacted] of the [redacted] on March 10, 1997. The record contains a "Certificate of Career" issued on January 15, 2001, by [redacted] District Secretary of the Southern District Assembly [redacted]. According to this document, the beneficiary served as Pastor of Ankoong [redacted] [sic] in Chonan City, [redacted] from December 1998 to January 15, 2001, the date of issuance of the document.

In response to the center director's request for additional evidence, the petitioner provided a document from [redacted] Senior Pastor of Angoong [redacted] [sic], describing the beneficiary's duties and salary during his employment as a pastor at that church. According to this document, the beneficiary served the church as a full-time, salaried pastor from April 1999 through August 2000. This information contradicts the information in the beneficiary's "Certificate of Career" issued by the Southern Assembly of the [redacted] According to this document, the beneficiary served as pastor of [redacted] from December 1998 through January 2001. It

is not clear whether "[redacted] are one and the same church, but the beneficiary's claimed dates of service clearly differ. The petitioner has not provided any explanation for these discrepancies. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

On appeal, [redacted] pastor of the petitioning church, stated that the beneficiary began serving the church as an associate pastor on a voluntary basis in October 2000. [redacted] explained that the beneficiary was provided with financial support by his sister, a naturalized United States citizen, during the two-year qualifying period. The record contains an affidavit from the beneficiary's sister attesting that she supported the beneficiary financially during the two-year qualifying period, along with her naturalization certificate and a copy of her federal income tax return for the year 2000.

The legislative history of the religious worker provision of the Immigration Act of 1990 reflects that a substantial amount of case law has developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision. *See* H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he or she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he or she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963.

In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he or she is engaged in other secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation, who, in accordance with their vocation, live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and salaried. To find otherwise would be outside the intent of Congress.

In this case, the petitioner has not shown that the beneficiary was a full-time, salaried religious worker throughout the two-year qualifying period. As noted earlier, the record contains conflicting information pertaining to the beneficiary's work prior to his entry into the United States. In addition, he served the petitioning church as an associate pastor on a voluntary basis during the period from October 2000 to March 22, 2001, the filing date of the petition. In view of the foregoing, it is concluded that the petitioner has not overcome the ground for the denial of the petition.

The director of the AAO noted that the petitioner also had not established that it had the ability to pay the beneficiary the proffered wage. On motion, the petitioner provides additional evidence regarding its financial status. Specifically, the petitioner provided a copy of its profit and loss statement for the period from March 2002 to February 2003, its balance sheet as of February 28, 2003, and a checking account statement for the period from May 1, 2003 through May 30, 2003. The petitioner has not, however, provided copies of its annual report, federal income tax return, or audited financial statements as required at 8 C.F.R. § 204.5(g)(2).

The director of the AAO also noted that the petitioner had not established that the beneficiary is qualified as a minister. On motion, counsel provides material from official documents of the [redacted] showing that the position of "elder" is the only order recognized as a minister by the [redacted] Counsel also submits a letter dated May 27, 2003, from [redacted] District Superintendent of the Southern California District of the [redacted], stating, [redacted] is an ordained elder in the [redacted] This is not a lay position. It is the only order recognized for the preaching ministry in the [redacted]" The documentation, along with the beneficiary's certificate of ordination, meets the requirements of 8 C.F.R. § 204.5(m)(3)(ii)(B). On motion, the petitioner has provided evidence to establish that the beneficiary is qualified as a minister in the denomination.

In reviewing an immigrant visa petition, Citizenship and Immigration Services must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. *See Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The motion is dismissed, and the denial of the petition is affirmed.